

FILED 10 NOV 22 15:11 USDC ORP

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS
CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court	District of Oregon
Name (under which you were convicted): JAMES ARTHUR ROSS	CV 10-1440 Petitioner Case No.
Place of Confinement: EASTERN OREGON CORRECTIONAL INSTITUTION	Prisoner No.: 12599830
Petitioner (include the name under which you were convicted) Respondent (authorized person having custody of petitioner)	
JAMES ARTHUR ROSS Petitioner on Review,	V. JEAN HILL, Superintendent, Snake River Correctional Institution
The Attorney General of the State of Oregon - John Kroger	

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are Challenging: Douglas County Circuit Court in the case of State of Oregon v. James Arthur Ross.
- (b) Criminal docket or case number (if you know): Trial court case No# 04CR0429FE
2. (a) Date of the judgment of conviction (if you know): 10th day of June 2004
 (b) Date of sentencing: 31st day of August, 2004
3. Length of sentence: 480 months mandatory minimum sentencing
4. In this case, were you convicted on more than one count or of more than one crime?
 Yes [] No []
5. Identify all crimes of which you were convicted and sentenced in this case:
 Attempted Aggravated Murder; Assault in the Second Degree;
 Rape in the First Degree; Assault in the Second Degree;
 Sodomy in the First Degree; Felony Assault in the Fourth Degree;
 Sodomy in the First Degree; Strangulation;
 Kidnapping in the First Degree; Menacing; and
 Kidnapping in the First Degree; Interfering with Making a Report.
6. (a) What was your plea? (Check one)
 (1) Not Guilty [] (3) Nolo contendere (no contest) []
 (2) Guilty [] (4) Insanity Plea []
 (b) If you entered a guilty plea to one count or charge and a not guilty plea to

another count or charge, what did you plead guilty to and what did you plead not guilty to? I plead no contest to the Att. Agg. Murder charge, both Kidnapping charges, the menacing and strangulation charges and the charge. I plead guilty to sodomy the charge, both assault charges and the felony assault in the fourth degree charge. I plead not guilty to the other sodomy charge. This is on the audio transcripts, however, the court later change the plea on it's own accord against my will.

(c) If you went to trial, what kind of trial did you have? (Check One)
 Jury [x] Judge Only []

7 Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes [] No [x]

8 Did you appeal from the judgment of conviction?

Yes [x] No []

9 If you did appeal, answer the following:

- (a) Name of court: Circuit Court for Malheur County.
- (b) Docket or case number (if you know): Malheur Cty Cir Ct Case No: 05084630M.
- (c) Result: Denied.
- (d) Date of result (if you know): Docketed Date of the 23rd day of Febuary, 2007.
- (e) Citation to the case (if you know): Order of judgment attached.
- (f) Grounds raised: I raised ineffective and inadequate assistance of appellate counsel and trial counsel and that the convictions and sentences are illegal and in violation of Article 1, Section 10, 11 and 15 of the Oregon Constitution and Trujillo v. Maass, and the 1st, 4th, 5th, 6th, 8th and 14th Amendments of the United States Constitution, made applicable to the states by and through the 14th Amendment to the United States States Constitution and Strickland v. Washington. I continued to raise several claims under this through pages 5-21 of my fourth amended formal petition for post-conviction relief. I also filed a fifth amended petition, however it was denied for timeliness, which is another claim that I raised in my appeals concerning the representation of my post-conviction attorney.
- (g) Did you seek further review by a higher state court? Yes [x] No []
 If yes, answer the following:
 - (1) Name of court: Oregon Court of Appeals.
 - (2) Docket or case number (if you know): Appeals Court Case No: A135040.

- (3) Result: Reversed and remanded with instructions to enter judgment granting post-conviction relief and resentencing on kidnapping convictions; otherwise affirmed. This ruling is also enclosed as it is part of the Petition for Review that was filed in this case, which is attached as well.
- (4) Date of result (if you know): Submitted on the 21st day of July, 2009 and Filed on the 19th day of May, 2010
- (5) Citation to the case (if you know): In it's opinion, the court held that trial counsel was inadequate and ineffective in failing to move to merge multiple counts of kidnapping.
- (6) Grounds raised: I continued to raise and preserve for federal review, all of my claims that I raised in my post-conviction. I also, raised an additional claim concerning the representation of my post-conviction attorney. I tried to file exhibits with the court, which I sent to him for his approval and filing, as the court does not accept direct filings from petitioner's who are represented by counsel. Ultimately, I had around 50 or more pieces of evidence, including the medical records out of the states own evidentiary, that were thrown out for being improperly filed. This was also the reason for my audio transcripts not being filed and my fifth amended petition and my oral arguments, memoranda and affidavits all thrown out because my attorney filed them either wrong or not at all or untimely. They said that I am not guaranteed counsel at the post conviction level and that everything is my fault or responsibility. This is unjust. It prejudiced my case extremely. I should at least have been guaranteed some safe guards against this.

(h) Did you seek further review by a higher state court? Yes [] No []
If yes, answer the following:

- (1) Name of court: Supreme Court of the State of Oregon.
- (2) Docket or case number (if you know): Supreme Court Case No: S58553.
- (3) Result: Review Denied.
- (4) Date of result (if you know): 17th day of September, 2010.
- (5) Citation to the case (if you know): None.

(i) Did you file a petition for certiorari in the United States Supreme Court?
Yes [] No []

10: Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? Yes [x] No []

11. If your answer to Question 10 was "Yes" give the following information:

- (a) (1) Name of court: Douglas County Circuit Court.
- (2) Docket or case number (if you know): Court Case No: 04CR0429FE.
- (3) Date of filing (if you know): Unknown at this time.
- (4) Nature of the proceeding: A 138.083 motion to amend/correct erroneous term in judgment and sentence.
- (5) Grounds raised: That the consecutive mandatory minimum sentences imposed on me were in violation of my State and Federal constitutional rights. I attacked the issue on the manner or procedure in which they were imposed. I stated that the court failed to follow it's own ORS rules 137.123 governing consecutive sentences and the 200-400% rule as I am not a repeat offender. I also attacked the post-prison supervision of 20 years imposed on me as they failed to account for time actually served in prison as a deduction. I also attacked the fact that the court failed to state on record any reasons as to why he was imposing each consecutive sentence upon me. Instead, he simply stated that "this is what I am going to do and my intent is 480 months total". He did not follow ORS rules or laws governing imposition of sentences. I also attacked the consecutive sentencing and imposition of measure 11 under these grounds and *Apprendi v. New Jersey* and *Blakely v. Washington* and how it should apply to me and the way that these harsh sentences were imposed upon me.
- (6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes [x] No []
- (7) Result: Denied as the court ruled after a filing by the district attorney that they had no jurisdiction to make a ruling on the motion. I appealed this decision to the Oregon Court of Appeals and then to the Supreme Court of Oregon. Both courts did make a ruling, however they ultimately denied the issue. This is all attached as well.
- (8) Date of result (if you know): Unknown at this time.

12. For this petition, state every ground on which you claim that you being held in violation of the Constitution, laws, or treaties of the United States. attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: I was denied effective and adequate assistance of appellate counsel on direct review and I have suffered prejudice as a result.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I filled in and sent a packet such as this one to the state public defenders office in order to directly review my case and file a notice of appeal. I was contacted by Rebecca Duncan who told me that she contacted my trial attorney and he told her that he did not believe that I had any appealable issues and that she did not see any either, so she was not going to file an appeal on my behalf. I argued with her over the phone and through written letters begging and demanding that she file an appeal at least against my consecutive sentencing and the harsh sentences imposed. She just flat out refused. I was ultimately time barred, which she points out in one of her letters to me. She told me to file a petition for post-conviction relief. Later I found out that I could have filed the Notice of appeal on my own, but she did not give me this knowledge and I did not know as I was so wrapped up in trying to get her to do something for me instead of just pushing me on down the road. I ultimately was denied my right to direct review because of this. She never filed anything. I could have at least been able to raise and argue my sentencing, more specifically, the consecutive sentencing imposed upon me. I would have used *Apprendi v. New Jersey* and *Blakely v. Washington* in the least. I would have also won in the Oregon courts as Ice did. Even though his case was later overturned, it does not exclude the fact that counsel for another inmate filed a direct appeal on those grounds, which my counsel could have done several of years before Ice. Also, my case goes further, because the judge never stated on the record the reasons under statute why he imposed the sentence that he did. In fact, the only reasons that could be picked out are based on actual facts of the crimes themselves that were never admitted to by me or submitted to a jury and found beyond a reasonable doubt. Facts of the crime itself should have had to either been admitted to by me or proved to a jury. Either way, I believe that my appellate counsel should have at least filed a notice of appeal in my behalf or provided me with the information that I could have sought direct review on my own. I could have also been able to attack the fact that I plead not guilty to one of the counts.

GROUND TWO: I was denied effective and adequate assistance of trial counsel and I have suffered prejudice as a result.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

First off, the counsel appointed to represent me, Daniel Bouck, had previously represented my mother in a murder trial. There was an incident where he took my mother to the roof of the jail house and gave her a pack of smokes and had her talk to him while he was recording the conversation. After that conversation he pulled my mother into a room where he himself and the district attorney, with the recording, attacked my mother verbally and mentally and tried to get her to plead to murder with a life sentence with the possibility of parole after 25 years. Fortunately, my mother was able to get an Honorable Judge to look into it and he discovered what had taken place and fired Daniel Bouck and allowed my mother new counsel. She ultimately ended up with a sentence of just a couple of years pursuant to a plea agreement to a lesser charge. Her new counsel stated that if it would not have been for Daniel Bouck messing the case up so bad, that my mother would have gotten no jail or prison time at all. This was the man who was appointed to represent me at my trial and sentencing. I had a major conflict with this man and had absolutely no faith in him or his loyalty in representing me. As far as I was and am still concerned, he is corrupt and in the district attorney's pocket. I had no trust or faith in his abilities to defend me. I tried several times to motion the court to get new counsel appointed to me. However, they refused to even hear me out and forced me to proceed with Daniel Bouck as I could not represent myself, obviously. I even tried to go to trial. After 4 days of trial, I realized that my attorney was not going to defend me whatsoever and on the fourth day he pulled me into a room and told me that the judge demanded that I make a plea and not to force my wife to take the stand. That if I made a plea that I would get concurrent sentencing of 120 months and maybe even drug treatment programming, which might take some extra time off of my sentence. However, if I demanded to continue then the judge would sentence me to every conviction obtained. I was told that I could always appeal his representation of me later in appeals, but I better take the offer or I would never get out of prison. So, I believed that no matter what I was innocent of or not it was obviously apparent that my counsel was not going to defend me and I did not want to make the judge angry. I was already scared to death of all of them anyways. I never thought that the justice system of America would force me into such a situation with such an attorney and then refuse to hear me out or substitute him due to the conflict and his unwillingness to defend me. Even Mr. Bouck himself said in his affidavit that if the relationship between him and me was better than the outcome of the case would have been significantly different. He didn't even defend me at sentencing as part of which, the Oregon Court of Appeals recognized. Instead, he merely asked the judge if he could take a seat as he hurt his back the night before. What is obvious is that if I had been appointed substitute counsel without the conflicts that were between Mr. Bouck and myself then the outcome of the proceedings would have been substantially different. As my appellate counsel pointed out in his opening brief to the court of appeals. That my counsel had me plead to the most serious charge in the indictment of Attempted Aggravated Murder when the evidence to support such a conviction was extremely vague and far from clear. My trial counsel, Daniel Bouck, told me that there

was no defense for me. There is also the facts that my counsel and I were not talking to eachother for at least a month leading up to the day of trial. I refused to talk with him, because I belived that he was doing nothing but destroying my case and just handing me over on a liver platter to the district attorney. In the last conversation we had together, I asked him why was he not checking into the things that I was asking him to. He said "why". I said because they are saying that I did this and that and there is evidence that I did not and if you are trying to disprove any of the allegations against me then you should be doing these things. He said that it did not matter because there was no defense available to me. I got angry and told him that I believed that he was in the district attorney's pocket and he was purposely damaging my case like he did to my mother's case. I must have touched a nerve with him because he said you know what I think I think you are guilty of all of these charges and you should be on your hands and knees begging the district attorney for a plea deal. I said see this is what I am talking about. You are not defending me at all. That is why you don't have a defense for me. I told him that he was fired and that I did not want him on my case and to leave me alone. There is letters that he sent to me showing this complete break in the relationship. Albeit, in his letters he makes it lightheartedly. The fact still remains that I did not talk to the man for at least a month before and until the day of trial. That is when I went before the judge on a pre-trial motion that I had filed and asked the judge for substitute counsel, which again, was denied as stated throughout the other claims in this petition. More proof of this complete and total break in the communication and client/attorney relationship is that my counsel tried to have a co-worker in his office contact me and work with me. Her name was Lori Nightengale-Bender. I told her the same. That I did not want him to represent me and that I refused to play this game with them. I told her that I had another motion in for substitution of counsel and I was waiting to hear back on it. She said that it would not be granted as Mr. Bouck already told you. You are either stuck with him or you can represent yourself. I told her that I refused to believe that and that I believed that the judge would hear me out. That I was refusing to have him represent me and as far as I was conserned, I told him that he was fired the last time I spoke to him and I told her that I would not speak to here either and I walked out of the room. These are just more facts and details that prove the complete and total break in the communication and client attorney relationship between Mr. Bouck and myself. I should have never been forced to trial with this man and in fact the outcome of the proceedings are an obvious result of what I had been saying all along. He should have never been on my case and all the time wasted in all the bullcrap between us could have been well spent with a different attorney who was willing to represent me and the outcome of everything would have beeen significantly different. I did not care if you thought I was guilty or innocent. I just wanted to be defended. Give me some sort of sign that you were actually trying to defend me. After all, I myself, not being a liscened attorney, have already gotten one kidnapping in the first degree conviction merged, wich is bassically like having it overturned and this should be the same, in the least, with the assault charges and maybe even the sodomy charges as well. I mean these are substantial differences that if my attorney would have been trying to defend me properly he would have at least found the arguments to these issues and informed me and that itself would have affected everything and any decisions that I made. It's a big difference to have your attorney tell you that there is no defense for you instead of telling you that there is some defense or that he is going to try this or that. For example, in 2004 the Crawford v. Washington case came out. I remember coming into the courtroom early one day and my attorney, Daniel Bouck, was talking with

the judge and the district attorney about it. I just remember the judge asking him if he was sure and he said he had no problems with it. I asked him what it was about and he told me nothing, that it was just a small detail that wasn't important. The truth is that there was a lot of talk going around that my wife did not want to take the stand. That she had been refusing to do so. However, the district attorney was insuring that she would do so when the time came. However, now knowing the Crawford case my attorney could have made an argument that the district attorney could not go forth with his case without her taking the stand or without her taking the stand to begin with. Either way, it would have been a good piece of information to let me in on. Instead, that is my whole point. He was just trying to get me convicted, not defend me. More proof of this is that he allowed the district attorney to file paperwork and twist testimonies and medical reports around to lead and make the court believe that my wife had suffered from a severe and brutal beating that left her with broken ribs that punctured and collapsed her lung causing internal bleeding and that she almost died on the way to the hospital. Yet, the medical records show that she did not have a punctured lung. That there was a small scratch on the outer lining of the lung, however there was no broken or fractured ribs to account for it. That otherwise her lungs and ribs were in good condition and that she was as a whole in remarkable condition. That all she did suffer from was some mass soft tissue bruising and the course of treatment was to give her a pain sedative and warm blankets because she complained that she was cold. This is right out of the medical reports. Even the paramedics chief paramedic stated that the trip from the scene to the hospital took approximately 13 minutes and was without incident. The fact of the matter is that the outcome of the pre-trial, trial and sentencing proceedings is the direct result of the ill representation that I was receiving from my counsel, Daniel Bouck. The fact is that if I would have been afforded substitute counsel the outcome of the trial proceedings would have been significantly different. I wanted to go to and finish trial. My true will was overcome by all the bullcrap and this is obvious. My attorney was not properly informing me, to anything for that matter. He was trying to convict me.

GROUND THREE: I was denied effective and adequate assistance of counsel at sentencing and I have suffered prejudice as a result.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

As stated in ground two, Mr. Bouck's assistance at sentencing was very minimal and almost non-existent. He failed to object to the 20 years of post-prison supervision that was imposed upon me when Oregon laws clearly state that I could have only received 140 months at the most as time actually served in prison is supposed to be taken off of the 20 year maximum sentence of post-prison supervision. I could and do argue further that under that rule that post-prison supervision is not allowed at all as I am serving the maximum amount of time as it is under measure 11. However, Mr. Bouck did not even consider any argument to the amount, if any, of post-prison supervision imposed upon me. He also failed to seek mergers of convictions. The Oregon Court of Appeals recognized this to an extent, however, not fully. I have other charges such as the assaults that should have merged as well as everything that I was convicted of was against the same person in a single and uninterrupted course of conduct. My counsel failed to raise any of this and according to how he represented

me at sentencing by merely asking to take a seat and allow the district attorney to have his way with the courtroom including submitting false statements to the court is only an obvious observation of his true intent to not represent me at all. He did not argue against the imposition of measure 11 mandatory minimum sentencing, or in the least, for a first time offender or altogether. He barely raised an argument concerning consecutive sentencing, however, failed to argue it in its whole. He could have argued that since I was convicted of and sentenced to a more serious charge of Attempted Aggravated Murder, using underlying charges to convict and sentence me to the more serious charge, that the lesser included offenses used to do so should merge in the least for sentencing purposes. Even though they are different charges, the Att. Agg. Murder charge demands the facts of the lesser included offense(s) in order for conviction. This is excessive punishment. He also allowed the district attorney to have his way with the courtroom and the judge using facts of the case that were never admitted to by me or proven to a jury beyond a reasonable doubt for imposing harsh sentencing. He failed to protect me from double jeopardy. He failed to ensure that I received a direct appeal. He never filed anything with the appellate court. I had to file paperwork with the public defenders office, which contacted him and he told them that I had no appealable issues. As far as he was concerned the sentence and convictions were just. This is coming from my own attorney. This only proves what I have been saying all along. He never did intend on representing me to the best he could. Heck, he didn't even intend on representing me at all. He only further lied to me and my family about the promise of a 120 month plea deal that magically disappeared. He just wanted me to plea so that he wouldn't be put on the spot to defend me as he had no defense(s) prepared for me. A professional investigator that I was in contact with was even aware of this deal, but she did not know what happened to it as she was not specifically on my case. Also, when I tried to get him replaced for substitute counsel approximately 6 different times, normally counsel themselves would step up and say hey, "my client and me have no relationship and nothing but bad feelings towards each other that has substantially affected my ability to defend him or make a defense for him". Instead, my counsel did everything he could to force himself upon me and convince the judge to not replace him. I have asked several other lawyers about this and they all said that if they were in my counsels shoes they would have had themselves substituted and taken off of the case. This only further makes me believe that my counsel was working with the district attorney to convict me and that's why no one wanted me to have substitute counsel, because they knew that if I did it would have made a significant difference and they would not have been able to convict me of every charge on the indictment.

GROUND FOUR: Convictions obtained by pleas which were unlawfully induced or not made voluntarily with the understanding of the true nature of the charges and the consequences of the pleas. I was denied effective and adequate assistance of counsel and I have suffered prejudice as a result.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

First off, I was under the understanding that if I did not force my wife to take the stand that I would receive a deal and be sentenced concurrently to all counts to a 120 month sentence and no more. After my pleas when I was sent back to my jail cell other inmates

asked me what happened and I told them. They told me that something was wrong, because if I was going to receive a deal that I would have already gotten it. That plea deals are usually done on the spot. Later, I confronted my attorney's assistant (because my attorney's office did not accept collect calls and we were not talking to each other because of all of the previously stated facts) Lori Nightengale-Bender whom is also a public defender and she told me that there was no deal. That it was unclear of what sentence I would receive. I told her then why in the hell did he have me plea. That if I am not getting the 120 months as promised then I want to go and finish trial. That I want to take back my pleas. She told me that I could not do that and if I spoke out against my attorney one more time the judge would throw me out of the courtroom and he would be very angry and sentence me harshly. I asked her what I could do then and she said nothing. Just try to work with Mr. Bouck and don't make the judge any more angry than he already is or else he will throw you out of the room. I was scared and had no reason not to believe her. The judge had basically spit in my face every time I begged the court for substitute counsel, which was about 5 or 6 different times, all denied and at one point I was yelled at by the judge for even asking, which actually forced me into tears in the courtroom because no one was listening. He told me it did not matter what I had to say or anything, because he was not going to allow me to shop around for an attorney. I am sure that my counsel had something to do with it. Another piece of evidence that proves that I did not know what I was doing and was only doing what my counsel told me to do is the audio recordings from the plea hearing. I was under the belief that I was allowed to plead not guilty to one of the Sodomy counts. I actually plead not guilty to this count and never changed my plea anywhere. The court or my attorney somehow changed it in the paperwork. This I do not understand. You can listen to the audio recording and although it seems that it was tampered with you can cut out the background noise and clearly hear me say not guilty and the judge say ok. Now, if I truly understood what I was doing and my pleas were not coerced I would have known that I could not plead not guilty to that count. Again, somehow this was all swept under the rug. The obvious is that I was being set up by my counsel and the district attorney. As stated above, this is the same kind of representation that he provided to my mother. Fortunately, she was able to get an Honorable Judge to listen to her and see the truth and unfortunately, I was not. It is not a coincidence that this is the same type of representation that he provided me. I believe he is a corrupt attorney that the district attorney has in his pocket. Another piece of evidence that my pleas were not knowingly, intelligently or voluntarily made is that my counsel had me plead to multiple charges of kidnapping in the first degree. Under Oregon law, I am innocent of these charges. I never kidnapped my wife. If anything this was a domestic violence that took place in a home that we both owned and lived in as husband and wife. Just because the next day my grandfather showed up and saw some bruises on my wife's face and decided to call the police does not mean that I was holding her hostage or captive or that there was a crime in progress. In fact my wife told the police when they first arrived that she did not want them there. Later after she was surrounded by battered persons advocates and detectives is when her mind changed. However, she was on the phone when the police arrived and pulled me out of my house at gunpoint. My mother said that it took her over 20 minutes for her and the police who were having her talk to my mom, to talk my wife into cooperating with them. This is not a kidnapping, but due to the inadequate and ill information that I was receiving from my attorney, I made a plea to both of them. Later, Oregon ruled in a case almost identical to mine, Wolleat, that in such an instance there is no kidnapping when it is an incidental aspect

in the commission of another crime. That substantial steps have to be taken in order for a kidnapping charge to be appropriate. Therefore, I never truly understood the true nature of the charges. At the time people were getting kidnapping charges for merely getting into a small altercation because they knocked somebody down and it moved them a couple of feet. If my attorney would have been exercising reasonable and professional skill and judgment he would have motioned for an acquittal or at least fought against it somehow or told me not to plead to, not just one, but both of them. Something. In fact, if he would have done any preparation on defending my case at all, he would have found an older case that would have lead him to this conclusion as the other attorney did in the Wolleat case. Instead, it's just more proof of his unwillingness to defend me or prepare a defense against the charges against me. He did not even ask for the merger of the two charges at sentencing, which the Oregon Court of Appeals has already determined that he was ineffective for failing to do. This brings another reason as to why my pleas were not knowingly, intelligently or voluntarily made. In determining to make a plea one takes into account several of factors and one of those factors is the charges and sentences that one might receive if he goes to trial and loses. I was under the understanding that I could be convicted and sentenced to both kidnapping charges in the least. This was part of a major decision in making my pleas. Now, the court has ruled that I could not be convicted or sentenced to more than one count of kidnapping and the fact that I should not even be convicted of kidnapping at all and the fact that my attorney was misinforming me to the true nature of the charges against me. This would have affected my decisions in pleading substantially. Again, it is not as if I did not go to trial. I actually did go to trial for 4 days and my true will and intent was to finish trial. Unfortunately, I was coerced and misinformed on several issues including the promises to a concurrent sentence of 120 months. My pleas should all be overturned and I should be granted to plea anew and have a new trial with counsel who is actually going to represent me and my best interests as this is my entire life here. If you are going to take my life away it should at least be done justly, fairly and right. I should not be setting in prison for charges that I could never have been convicted of or because my counsel was not willing to represent me and instead was giving me wrong information and lying to me. Especially with the conflict of what he tried to do to my mother when I was 13 years old. I will never forgive that man for that and to have him forced upon me and force me to proceed to trial and sentencing with him representing me was in itself unjust and unconstitutional. It would be absurd to ever expect me to have faith in that man's abilities to defend me. I mean, I was convicted of every single charge on the indictment that was amended 3 different times. To top it, I received no deal whatsoever. I received the maximum amount of time. No lawyer exercising reasonable and professional skill in their right mind is going to have their client plead so that he could be convicted of every charge in the indictment and sentenced to the maximum amount of time in prison. This itself is proof that my counsel was ill informing me and it further proves what I have been saying all along. He lied to me and tricked me into making a plea.

GROUND FIVE: I received inadequate assistance of post-conviction counsel and I have suffered prejudice as a result.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

So far, the law states that I am not guaranteed effective assistance of counsel at the post-conviction level. That everything that goes wrong is my fault. I disagree with this. How can it be my fault if I send over 50 pieces of evidence to my “court appointed” attorney to file them with the court, because the court does not accept direct filings from petitioners represented by counsel, again, how can it be my fault if he files them or “allows” them to be filed with the court improperly. This is what happened to me. I had tons of exhibits and evidence that I believed proved the injustice in my case and they were all thrown out of court for being either untimely or improperly filed. This includes the medical records that came out of the state’s own evidentiary. These records proved that the injuries were not as bad or as significant as made out to be and that the victim was never near death. In fact, they proved the complete opposite. There were also affidavits from people that took my wife to a dentist appointment the next day at the hospital. The hospital allowed her to check out on her own accord and get into a full size bronco SUV and take off to a dentist appointment for several hours. She was smoking and everything. This is not the actions or characteristics of someone who has a punctured and collapsed lung and suffering from internal bleeding, which were all facts that my trial counsel allowed the district attorney to give to the judge during trial and in sentencing me harshly. All of this evidence was thrown out because my post-conviction counsel filed them improperly. This is not my fault. I am not the licensed counsel. I merely took all the evidence that I had concerning a claim such as the one just described and stapled it altogether to a piece of paper stating that I believe that all of this is proof against this certain issue. I then mailed them to my post-conviction counsel for him to go over and file with the court and he never said anything to me about them being wrong or his inability to file them as they were improper. Instead, he took them and put a new front page on them and signed them for his approval and filed them with the court. I did not find out that they had been wrongly filed until the post-conviction trial and by that time the judge would not allow me to re file them. This is not my fault and I shouldn’t have been penalized for it and my case severely damaged because of it. I should have been safeguarded with some right or another to prevent such a grave injustice as this one. I also claim that Lori nightengale-Bender should have been supeoned as she knows that I was under the understanding that I made a plea that I would receive the 120 months plea deal and are confrontation of which took place after I became aware that I would not be receiving such a deal and her comments or threats towards me about the issue and the conversation that took place between us. Her refusal to even be talked to by my investigator and refusal to give a statement is only proof of her foul play and coercion in my case.

GROUND SIX: The trial court abused its discretion in not allowing me substitute and conflict free counsel or even holding a hearing on the matter. I was denied effective and adequate assistance of counsel and I have suffered prejudice as a result.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

As stated throughout the claims above and throughout my post-conviction proceedings, the trial court refused my every motion and attempt to have my trial counsel, Daniel Bouck, substituted. They would not even hear me out. There were several conflicts between myself and Mr. Bouck. Some led to harsh words and I told him several times flat out

that he was fired and that I did not want him on my case. He told me that he believed I was guilty and that I should beg the district attorney for a plea deal. The whole time in my case was spent trying to get him substituted and new counsel appointed. He never had a defense prepared as the attorney client relationship between him and myself was beyond repair. Just a few days before trial my mother flew over from England with the hopes of getting me new counsel. We let the judge know this the day before trial on pre-trial motions. My mother informed him that she wished to retain counsel if he would not substitute counsel as we had no faith in Mr. Bouck and flat out did not trust him. Unfortunately, the judge only gave my mother a couple of hours as a recess for her to come up with retained counsel. Everyone my mother spoke to wanted a minimum of a \$50,000.00 down payment and even more later to just step in. My mother could not manage this in such a short amount of time, especially since she lives in another country altogether. There was no way that she could get things in order and since I obviously could not represent myself, I was forced to proceed with Mr. Bouck. Although, I did state on record to the judge that I was in objection to all of this and that I wished to appeal the issue and judge merely said fine, whatever, we will now proceed to trial. I was devastated. My hopes and beliefs in the system were decimated. The outcome of the trial and my pleas and sentences are the only obvious outcome of the situation that I was forced to proceed with. As professional counsel Patrick Ebbett told me that he does not know any professional attorney that would have ever allowed me to receive more than 10 years. He is astonished at how ill represented I was at trial. I believe that I should have been afforded substitute counsel or in the least trial should have been postponed for a couple of weeks in order for my mother to be able to put things in order to properly obtain suitable counsel.

GROUND SEVEN: My convictions, pleas and sentences were obtained by prosecutorial misconduct and I was denied effective and adequate assistance of counsel and I have suffered prejudice as a result.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The district attorney withheld information concerning the true extent of my wife's injuries from the court. My trial counsel allowed him to do this. They both allowed the court to believe that my wife had suffered from broken ribs that punctured and collapsed her lung and that if it hadn't been for the medical expertise of the paramedics that she would have died on the way to the hospital. The facts are, that if this was the case the police would not have wasted time, over 20 minutes to be more specific, in having my mother and grandparents talk my wife into cooperating with them in allowing them to take her to the hospital. The fact is that they knew that they needed to get her into the ambulance so that they could record it as a medical emergency to justify dragging me out of my owned house on my property at gunpoint without knocking and announcing themselves or there intents first. There is also the facts that the medical report from the ambulance head chief stated "that the trip to the hospital took approximately 13 minutes and was without incident". This is not a statement of someone who has a patient dying in the back of there ambulance. There is also the medical records that show the entire steps taken once she arrived at the hospital and nowhere was there anything in the record that shows any slice of evidence that the

medical personal had to perform some medical necessity to save her life. In fact the x-rays show that she did not have any broken or fractured ribs and that she was in remarkable condition. That all they could identify was mass soft tissue bruising which they gave her warm blankets and a pain sedative to take care of her. This toppled with the facts that she left the hospital the next day for a dentist visit with my sister for several hours where she was smoking the whole way is more proof of how the state was exaggerating the severity of the injuries. These are facts used to convict me. These are facts that the district attorney gave to the judge in order to sentence me to the maximum. This was unjust and unconstitutional. This especially because my trial attorney was aware of all of this and still allowed it without objections. Another piece of evidence is the fact that this crime was treated as a crime in progress, which it was not. I also, believe that the woman's battered persons advocacy was allowed to play way to much of a part in the prosecution proceedings.

GROUND EIGHT: Unlawful search and seizure and I was denied effective and adequate assistance of counsel and I have suffered prejudice as a result.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

I was pulled out of my home by gun point. The police treated the scene as a crime in progress which it was not. The altercation that did take place was the night before. My grandfather stopped by the next day and observed bruises on my wife's face. When he left he felt it necessary to contact the police, which the sheriff's department and other local law enforcement treated it as a crime in progress. I believe that my counsel was ineffective in fighting against this as he failed to raise the issue even though I requested him to. As stated previously, it was not until a couple of days later, while I was in jail, that my wife decided that she wanted me to spend the rest of my life in prison. Even after what my grandfather did for her and my sister taking her to the dentist's office the next day, she ultimately went to a battered woman's advocacy shelter where she later determined that she wanted nothing to do with my family altogether. The way the police and these groups force themselves into these domestic violence situations I believe affects a great deal on the whole situation itself. In an instance where there might have never been a case, they basically make one. The way they forced themselves into my home and took it over has a tendency to change the outcome.

GROUND EIGHT: Counsel failed to raise a merger of convictions claim and ultimately fail to protect me from double jeopardy, excessive punishment and I have suffered prejudice as a result.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

My counsel failed to raise a duoble jeopardy argument to the multiple and undifferentiating charges against me that I was ultimately convicted of. More specifically, the sodomy charges should have merged as well as the assault charges. Note that I have already managed to get the two kidnapping charges merged. He could have also argued that the assault charges should have merged with the Attepmtd Aggravated Murder charge and in

the least for sentencing purposes. He should have also argued that the sodomy charges should have merged with the Attepmted Aggravated Murder charge for sentencing purposes also.

INCORPERATIONS

Finally, my wish and my intent in this petition is to continue to raise all of my claims that I have been raising in all of my post-conviction proceedings and appeals. I wish to incorporate them into this petition for relief. They are attached to this petition.

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction?

Yes [x] No []

14. Have you previously filed any type of petition, application, or motion in a federal court regarding ;the conviction that you challenge in this petition?

Yes [] No [x]

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging?

Yes [x] No []

If "Yes," state the name and location of; the court, the docket or case number the type of proceeding, and the issues raised: See section 9 of this petition. I am to be remanded and resentenced on the kidnapping charges. The issue here is that my 1 year time limit is questionable. Under regular circumstances, my time frame is almost up. However, there have been other filings in the courts as stated in section 11 of this petition that may or may not extend that time limit. Unfortunately, I am not a skilled lawyer that can make that decision or conclusion and in fact my own appointed appellate counsel could not either. He told me that I should immediately file my federal writ of Habeas Corpus as soon as possible, so that is what I am doing now.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At Preliminary hearing: None that I am aware of.

(b) At arraignment and plea: None that I am aware of. I was first arraigned and made my pleas of not guilty before I was appointed counsel. When I was later re-indicted, I was then represented by Daniel Bouck.

(c) At trial: Daniel Bouck

(d) At sentencing: Daniel Bouck

- (e) On appeal: No direct appeal was ever filed, however Rebecca Duncan was the one who received my paperwork at the public defenders office and refused to file an appeal for me or even let me know that I could file one myself.
- (f) In any post-conviction proceeding: Michael R. Mahony
- (g) On appeal from any ruling against you in a post-conviction proceeding: I was originally represented by Patrick Ebbett of Chilton, Ebbett & Galli, LLC who, because he left the firm, handed my case over to his colleagues, which then Chilton took over.

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Unknown to me at this time.

18. **TIMELINESS OF PETITION:** My petition is timely and all of my claims have been raised and properly preserved for federal review.

CONCLUSION

Taken alone or in any combination, the above has caused prejudice to the petitioner, denied petitioner of his due process of law and effective assistance of counsel rights as promised by the Oregon State Constitution and the United States Constitution.

Also, taken alone or in any combination, the above has caused prejudice to the petitioner where he has been subjected to several multiplicitous and undifferentiating convictions resulting in a mandatory minimum sentence of 480 months incarceration with 240 months post-prison supervision, denied petitioner of his protection against cruel and unusual punishment and his rights to rehabilitation and his due process of law and effective assistance of counsel rights and birthrights as promised by the Oregon States and Untied States Constitution(s).

Wherefore, petitioner prays and asks that the Court grant the following relief:

- a. Vacating his convictions and sentences in Douglas County Circuit Court in the case of State v. James Arthur Ross, Case No. 04CR0429FE;

- b. Vacating his convictions and sentences in Douglas County Circuit Court in the case of State v. James Arthur Ross, Case No. 04CR0429FE and allow the petitioner to plea anew;
- c. Granting a new trial in Douglas County Circuit Court in the case of State v. James Arthur Ross, Case No. 04CR0429FE;
- d. Release Petitioner from custody;
- e. Grant a delayed Direct Appeal;
- f. Remand the case of State v. James Arthur Ross, Case No. 04CR0429FE to the in Douglas County Circuit Court for further proceedings;
- g. Modify the sentences; and/or

grant any other relief to which this honorable court would deem just, fair or appropriate and any other relief that the petitioner may be entitled to.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____ (month, date, year).

Executed (signed) on this 18th day of November, 2010.



Signature of Petitioner

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody Pursuant to the judgment of a State court. The limitation period shall run from the latest of –

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____

IN FORMA PAUPERIS DECLARATION

[INSERT APPROPRIATE COURT]